

C. Estimates for SMR Licensees

Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average gross revenues of less than \$15 million in the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.⁸⁵

The rule adopted in this Report and Order applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We do know that one of these firms has over \$15 million in revenues. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Report and Order includes these 60 small entities.

No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we

⁸⁵ See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

D. Estimates for Resellers

We were unable to obtain reliable data regarding the number of entities that resell services covered by the rule adopted in this Report and Order, or how many of these are small entities. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We note, however, that resellers are included among the 1,178 radiotelephone firms described in the 1992 Census data discussed above, 12 of which had 1,000 or more employees. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of resellers can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all resellers are small entities, as that term is defined by the SBA.

V. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements:

The rule adopted in this Report and Order imposes no reporting or recordkeeping requirements. The rule also requires no affirmative compliance action by any entity to which it applies. Rather, the rule operates as a negative prohibition forbidding restrictions on the resale of service. Therefore, the only compliance costs likely to be incurred are administrative costs to ensure that an entity's practices are in compliance with the rule.

VI. Steps Taken to Minimize the Economic Impact on Small Entities:

The Commission determines not to apply its resale rule to CMRS providers other than those classified as cellular, broadband PCS and certain SMR. Many of the providers that are thereby excluded from the rule are small entities, including paging, narrowband PCS, air-ground, public coast service, and non-covered SMR providers. In addition, the Commission's decision to sunset the resale rule five years after it awards the last group of initial licenses for currently allotted broadband PCS spectrum will reduce the impact of the rule on small entities by limiting the period of time for which such entities are subject to that rule. By prohibiting restrictions on resale during a transitional period, the Commission's decision benefits small entities that are resellers or that will use resale while they are building out their facilities.

VII. Significant Alternatives Considered and Rejected:

The Commission considered and rejected several significant alternatives. The Commission rejected the alternative of extending the resale rule to all CMRS providers

because it determined that such a rule is unnecessary at this time to promote competition or the availability of socially useful offerings in services other than cellular, broadband PCS, and geographic area SMR. At the same time, the Commission rejected the alternative of extending an interim resale rule to a universe less than all cellular, broadband PCS, and covered SMR providers because it concluded that a more limited rule would not adequately promote its competitive and social ends and would be inconsistent with the principle of regulatory parity. The Commission rejected the alternative of continuing the resale rule indefinitely because it determined that the rule would be unnecessary once broadband PCS licensees are fully operational as facilities-based competitors to cellular providers. Finally, the Commission rejected the alternative of allowing providers to restrict resale by their facilities-based competitors because in the short term such an exception would defeat the purpose of allowing new entrants to use resale to help them enter the market more quickly, and in the long term the sunset of the resale rule as a whole would render the exception irrelevant.

VIII. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

APPENDIX C

Final Rules

Parts 20 and 22 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

Part 20 - COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1092, as amended; 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

2. The Table of Contents for Part 20 is revised by adding new text and listings to read as follows:

PART 20 - COMMERCIAL MOBILE RADIO SERVICES

20.12 Resale.

3. Section 20.3 is amended by adding the following definition in alphabetical order to read as follows:

Section 20.3 Definitions.

Incumbent Wide Area SMR Licensees. Licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz service, either by waiver or under Section 90.629 of these rules, and who offer real-time, two-way voice service that is interconnected with the public switched network.

4. New Section 20.12 is added to read as follows:

Section 20.12 Resale.

(a) *Scope of Section.* This Section is applicable only to providers of Broadband Personal Communications Services (Part 24, Subpart E of this chapter), providers of Cellular Radio Telephone Service (Part 22, Subpart H of this chapter), providers of Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands that hold geographic area licenses (included in Part 90, Subpart S of this chapter) and offer real-time, two-way voice service that is interconnected with the public switched network, and Incumbent Wide Area SMR Licensees.

(b) *Resale.* Each carrier subject to this Section must permit unrestricted resale of its service. This paragraph shall cease to be effective five years after the last group of initial licenses for broadband PCS spectrum in the 1850-1910 and 1930-1990 MHz bands is awarded.

Part 22 - PUBLIC MOBILE SERVICES

1. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

2. Section 22.901 is amended by deleting paragraph (e).

SEPARATE STATEMENT OF
COMMISSIONER RACHELLE B. CHONG

Re: Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Report and Order, CC Docket 94-54

A mandatory resale requirement was a policy that worked well in the early days of cellular telephones. The wireline carriers had a competitive advantage over nonwireline cellular carriers, due to the fact that the wireline carriers received their FCC licenses first and had a "headstart" in the marketplace. The resale requirement allowed the nonwireline cellular carriers to begin marketing their services immediately to retail customers and, thus, minimized the earlier carrier's headstart advantage.

We have a somewhat comparable situation in today's wireless marketplace, as we continue to take steps to increase competition. There are two incumbent cellular carriers with a significant headstart that are operating in each market area, and newly licensed broadband Personal Communications Services (PCS) licensees that are just entering the market. We also have a subset of specialized mobile radio services (SMR) licensees¹ seeking to enter the same market and compete with cellular and PCS providers. In our decision today, our goal is to ensure that, while these new entrants are building out their systems, they can immediately compete with the cellular providers in their home markets. Accordingly, we are retaining our resale requirement for cellular and extending it to PCS and covered SMR providers during the period of time the new entrants are constructing their systems.

I write separately because I am very pleased that the Commission showed restraint in imposing this resale obligation. I recognize that a resale requirement can impose significant burdens on commercial mobile radio service (CMRS) providers, thus, I am pleased that we narrowly crafted our resale obligation to fit our concerns. First, we are only imposing mandatory resale on cellular, broadband PCS and covered SMR services, not on all CMRS providers. I think this is sensible. In a number of the other CMRS markets, such as the paging market, competition is firmly established and quite vigorous. I strongly believe that in such a market, we ought not impose additional regulation but let the marketplace drive whether resale is necessary. I note that in the paging market, absent any mandatory resale obligations, resale sprang up by itself. In other markets, such as the air-to-ground telephone market, resale appears to be technologically infeasible or economically

¹ These SMR providers include geographic area 800 MHz and 900 MHz SMR licensees as well as incumbent wide area SMR licensees who offer two way, real time voice service interconnected to the public switched telephone network. *Order* at Para. 21. These providers are referred to in the *Order* and herein as "covered SMR providers".

unreasonable. I do not think it is appropriate to impose a resale requirement in these markets absent a demonstration of the need for and feasibility of resale.

Second, the Commission showed restraint by agreeing to sunset the mandatory resale restriction in five years which is when the PCS buildout period ends. At the end of five years, the new competitors will have their systems constructed and thus will be able to provide vigorous facilities-based competition. I believe that, at this point, as in the paging market, we should let the market forces determine whether resale makes economic sense. I feel confident that once there are up to eight CMRS competitors competing in each market, there will be little need for any governmental mandates as to resale obligations.